In the

# United States Circuit Court of Appeals

## For the Ninth Circuit

No. 4522.

LUTHER WEEDIN, as Commissioner of Immigration at the Port of Seattle, Washington, Appellant

vs.

WONG JUN, Appellee.

Appeal from the United States District Court for the Western District of Washington, Northern Division.

Honorable Jeremiah Neterer, Judge

## Brief of Appellee



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### STATEMENT OF THE CASE

Wong Jun, appellee, applied for admission at the Port of Seattle on July 9, 1924, as the dependent unmarried daughter of Wong Chai Chong, a domiciled Chinese merchant.

The right of appellee to be admitted to the United States under the Immigration Act of 1924 may await the decision of the Supreme Court of the United States in cause No. 769 therein, entitled *Cheung Sum Shee, et al., vs. John D. Nagle,* for the reason that the United States Circuit Court of Appeals for this Circuit has therein certified that question of law for decision to the Supreme Court of the United States.

The right of appellee to be admitted to the United States under the Chinese Exclusion Laws prior to the 1924 Act is here the question for decision. Judge Neterer, in the District Court, granted the Writ of Habeas Corpus herein and ordered appellee discharged from the custody of the Commissioner of Immigration as being entitled to be admitted to the United States under both the Immigration Act of 1924 and prior Chinese Exclusion Laws, from which order the Commissioner of Immigration appeals.

The facts in this case are agreed. The sole question for this Court to decide is a question of law, the question to be decided being: Is the father of appellee a merchant within the provisions of the Chinese Exclusion Act?

The testimony of witnesses taken by the Immigration officials, said testimony being an exhibit in this case, shows the undisputed facts regarding the father of appellee to be, that he was admitted to the United States from China at the Port of San Francisco on September 15, 1910, presenting at that time a Section Six certificate issued to him by the Government of China, under the Treaty of 1880 (22 Stat. 826) and the Act of 1882, as amended by the Act of 1884 (23 Stat. 115); that he has maintained his status as a merchant in this country for the past fifteen years and that he has never been a laborer within the meaning of said Chinese Exclusion Laws since his admission to the United States in 1910; that the immigration service has always recognized him as a merchant and has admitted two of his minor sons from China to the United States, namely, Wong Jung in the year 1914 (Exhibit here in San Francisco File 13627/11-2), and Wong Chong in the year 1921 (Exhibit in this case San Francisco File No. 19981/17-25).

The said testimony further shows that during the past four or five years the father of appellee has been connected with, as a part owner of, the Wong Kew Restaurant, at 1205-7-9 Market Street, Philadelphia, and at no time during his connection

with said restaurant has he performed any labor therein, but that his duties at all times have been in connection with the ownership and mercantile character of said business. He was the treasurer of said company until September, 1923, at which time he became the assistant manager thereof, which position he has continued to hold up to the present time, and that since September, 1923, his duties have been entirely in connection with the management of said Wong Kew Restaurant Company.

The testimony and record further show that said Wong Kew Company is one of the largest and among the leading Chinese restaurants in the United States, occupying the second and third floors of the premises above described, which company transacts from $130,000.00 to $140,000.00 of business yearly, the furnishings and equipment being worth the sum of $140,000.00, on which they carry insurance in the sum of $70,000, the monthly rental paid for said premises being $1,125.00.

The above and foregoing facts are contained in the record on file herein and are conceded.

## ARGUMENT

The question of law for the Court here to decide is: Is the part owner of a large Chinese restaurant,

who performs no labor in connection with the non-mercantile end thereof, but whose duties are entirely in connection with the management of said business, a "merchant" or a "laborer" within the meaning of the Chinese Exclusion Law, *supra?* The District Court below, Ex Parte Wong Jun, 3 F. (2d) 502, held that he is a merchant. Judge Neterer in his opinion said:

"A manager may be said to be one who has general control over and conducts and directs the affairs of a concern, and has knowledge of all its business and property, and who can act in emergencies on his own responsibility. It affirmatively appears in the record that the father is assistant manager; in the absence of the manager has entire control of the concern. He does no manual labor. He orders goods, oversees and directs the business in the absence of the manager and assists him when he is present. * * *

"By the same token the manager or assistant manager of a restaurant, who performs no manual labor, is a "merchant". It seems obvious that the purchasing of supplies and selling them cooked, if the party does not do the manual labor of preparing them or serving them, is as truly merchandising as selling goods over the counter, or receiving money on deposit and selling exchange or discounting commercial paper."

Years ago and before the Chinese restaurant business had evolved into its present magnitude,

and general high class character, when the owners of small Chinese restaurants cooked and served the food in their own place of business, the immigration service and the courts held that the Chinese proprietor of such a restaurant who performed such manual labor therein was a laborer and not a merchant within the meaning of the Chinese Exclusion Law. Such ruling and holding at that time under such facts was no doubt within good reason and law; but of recent years the immigration service and the courts have recognized the expanse of the Chinese restaurant business to such an extent that they have in many cases uniformly held that one engaged exclusively in the management of the mercantile end of a large Chinese restaurant was a merchant within the meaning of the Chinese Exclusion Laws. This ruling and practice has been followed by the immigration service since the decision of Judge Hough in the year 1915 in the District Court for the Southern District of New York, in an unpublished opinion rendered in the case of the *United States vs. Choy Ying.* The court therein said:

"There is a second contention here presented that the applicant is himself a merchant, the government holding that one who keeps a restaurant is a laborer.

"It is undoubtedly true that one may own a restaurant and yet be a laborer, as for instance, if he cooks and serves food even in his own shop. But it seems to be equally obvious that there is a side or department of the restaurant business that is just as truly merchandising as selling goods over a counter, *i. e.*, the purchasing of supplies and the selling of the cooked food produced.

"The evidence is uncontradicted that this was the kind of business that the appellant did as long as he was able to work.

"I am therefore of the opinion that both as the son of a merchant and as a merchant himself, the appellant is entitled to remain in the United States and the order of deportment is reversed."

Here the mercantile character of the growing Chinese restaurant business appears for the first time to have been made, in terms, the subject of judicial announcement. In a recent unreported case in the United States District Court, for Northern District of California, Judge Kerrigan discharged from custody Chin Jack Fong, the minor son of a restaurant proprietor. A similar decision was rendered by the Circuit Court of Appeals for the Second Circuit, holding the manager of a Chinese restaurant to be a merchant. That part of the opinion is as follows:

"Chin Wee, a Chinese person who came to this country about 1869 and was living in San Fran-

cisco at the time, testified that Chin Hing, who was an uncle of the witness, was the proprietor of a restaurant in that city, the witness working for him in the restaurant. Chin Hing therefore belongs to the merchant class, and any minor son whom he might bring to San Francisco with him would—by attribution of status—come within the same class." Lee Chee vs. United States, 224 Fed. 447.

As a result of these two later decisions the immigration service, which had been ruling to the contrary, basing past policy on the case of Ah Yow, 59 Fed. 561, decided 30 years ago, and the case of Chung Ki Foon, 83 Fed. 143, cited in appellee's brief herein, changed its view and the last two decisions rendered over twenty years ago were no longer followed. The immigration service thereafter adopted the ruling in the Choy Ying and Lee Chee cases that the management of modern Chinese restaurants is mercantile. However, a reading of the Ah Yow case shows that the keeper of that restaurant was "one who keeps a place for serving meals, provides, prepares and cooks raw material to suit the tastes of his patrons." The duties of petitioners in the Ah Yow and Chung Ki Foon cases, as Judge Neterer says, are not limited as here, and therefore cannot be authority. Following Judge Hough's decision, supra, the immi-

gration service adopted the policy of granting a mercantile status to the part owners of large Chineses restaurants engaged strictly in the management of the mercantile end thereof. Discussing Judge Hough's decision the immigration service, in a letter in its file No. 53874/7 says:

"So long as it was clearly shown that the Chinese was engaged personally in that end of the business which consisted in buying and selling merchandise at a fixed place, the attachment to the business of a manufacturing industry could not operate to deprive such a Chinese of his mercantile status * * * ."

adding that:

"It is apprehended that the restaurant business as *now conducted* by Chinese in some of the larger cities does not differ in any material or substantial manner from business of the kind just mentioned."

And further, referring directly to Judge Hough's decision, this same letter states:

"The Bureau has no criticism to offer with respect to the holding of Judge Hough with respect to the second question of law involved in the case, and as that question is determinative of the entire matter, it would not suggest the taking of an appeal."

In a later official communication of the Department of Labor to the Commissioner of Immi-

gration at Seattle, date February 16, 1916, file No. 54133/9, it was frankly admitted that the former conclusion that a restaurant keeper is a laborer "has been predicated on the assumption that as is usually the case, the restaurant keeper himself prepares and serves the food or takes some other part in the manual labor, necessary to the maintenance of a restaurant * * *. But there is a buying and selling phase of the running of a restaurant that is clearly mercantile in character, and where one is engaged solely in that part of the business it does not seem logical to hold that he is a laborer * * *."

And the Bureau held that the restaurant proprietor in that case was entitled to be regarded as a merchant, "as it is clearly shown that his connection with the business has been of a mercantile nature, and his duties therein have not included the performance of any labor in connection with the non-mercantile end thereof."

The above is a clear recognition of the fact that the Ah Yow and Chung Ki Foon decisions, supra, can only be justified on the theory that the petitioners in those cases themselves performed the manual labor necessary in the preparation of foods in their restaurants, and can constitute no authority for the proposition that a restaurant owner who,

like appellee's father, performed no manual labor, is not a merchant.

It should not be necessary to here set out at any length the well-established proposition of law that the Chinese Exclusion laws are directed only against the laboring classes. Judge Ross, in Ah Fawn, 57 Fed. 591, recites in full all of the preliminary negotiations leading up to the Treaty of 1880, supra, and recited that said laws were not intended to exclude those "who went to the United States for the purpose of teaching, study, *mercantile transactions*, travel or curiosity."

Justice Field, in the *"Case of the Chinese Merchant,"* 13 Fed. 605, said:

"The Act, conforming to the supplementary treaty, is aimed against the immigration of 'Chinese laborers'—not others";

and in regard to the Treaty of 1880 says:

"It provides, in express terms, as seen above, that the limitation or suspension shall apply only to them, 'other classes not being included in the limitations.' ".

Justice McKenna, in the Circuit Court of Appeals, this Circuit, in the case of *Lee Kan vs. United States*, 62 Fed. 914, held that the exclusion features of the Treaty of 1880 and the Chi-

nese Exclusion Laws were for the purpose of excluding Chinese laborers—not others.

Congress, in the Act of November 3, 1893, (28 Stat., L. 7), amended the Act of May 5, 1892, for the purpose of more accurately defining the term "Chinese laborer," making the term more comprehensive than theretofore, and defined the word "laborer," as follows, to mean:

"Both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying or otherwise preserving shell or other fish for home consumption or exportation";

and in the same Act Congress defined the word "merchant" as follows:

"The term 'merchant,' as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant."

In this Circuit Judge Gilbert, in 184 Fed. 687, in one paragraph of the opinion in that case gave

expression to the proper intention of Congress in designating the class of business men entitled to privileges under the Chinese treaty and Exclusion Laws, as distinguished from the class of Chinese who are laborers, and therefore not entitled to such rights under said treaty and laws. Judge Gilbert there expressed the idea that there was a laboring end to certain kinds of business, and that there was a mercantile end to the same business, and that those Chinese who were identified with the laboring end of that business must be classed as laborers under the 1893 Act, supra, and those Chinese who are engaged exclusively in the mercantile end of such business are the ones designated as "merchants" in said Act. In other words, the Court there made a distinction, in interpreting said 1893 Act in these words:

"Between merchants who buy and sell goods at a fixed place of business, and all those who sell goods which are the product of their own labor, or who sell goods which they have produced to vend at no fixed place of business."

In this Circuit Justice McKenna also aptly expressed the same idea in the case of *Lai Moy vs. United States*, 66 Fed. 955, when he said:

"It will be observed that the definitions of the act are very careful and confined, and we may not enlarge them. The designation 'merchants' does

not include, comprehensively, all who are not laborers, but strictly 'a person (to quote the act) engaged in buying and selling merchandise.' To fabricate merchandise, as appellant did, is not to buy and sell it. Nor may both be done, for the 'merchant' may not (again to quote the act) 'engage in the performance of any manual labor except such as is necessary to the conduct of his business as such merchant,'—that is, in buying and selling merchandise; and the manual labor which is precluded is skilled as well as unskilled. One-half of appellant's time was engaged in cutting and sewing garments. This was manual labor not necessary in the buying and selling of merchandise. If we may indulge this, we may indulge more, and all artificers would be excluded from the act provided they worked for themselves or mingled with their proper work any traffic in merchandise."

Applying this reasoning to our large modern Chinese restaurants, one of the owners thereof could not both manage the restaurant and do the manual labor necessary in preparing and serving and be entitled to be classed as a merchant within the meaning of the Chinese Treaty and Exclusion Laws, but if he confines his business strictly to the management of said restaurant, then he is entitled to be classed as a merchant, for the reason that he employs others to do the labor in connection with the preparation and serving in the restaurant,

which is not necessary in the conduct of the mercantile end of his restaurant business.

Judge Gilbert, in this Circuit, in the case of *Lee Ah Yin vs. United States*, 116 Fed. 614, discussed the meaning of the term "laborer" and "merchant" in the light of the Act of 1893, supra. The court there said that the Act was amended because there were:

"Certain occupations which were upon the border line between the occupation of laborer and that of merchant, and which in some aspects might be regarded as belonging to the merchant class. The occupation of mining, taking fish for the purpose of selling, peddling, operating a laundry, etc., partake of some of the characteristics of the occupation of the merchant, and those engaged therein might in a sense be deemed merchants. Evidently it was to define these specific occupations, and to dcelare that persons engaged therein are not merchants, that the act was adopted."

Therefore, it must be concluded that if Congress intended that one connected with the management of a large Chinese restaurant to be a laborer and not a merchant within the meaning of said law, it would have included the term "restaurant proprietor" along with the term "laundrymen," etc., when it enlarged the scope of the word "laborer" in said Act. If the management of a restaurant

was to be laboring within the meaning of said Act, Congress would have so stated, for the reason that it was well known that Chinese people were generally engaging in the restaurant business.

**Mercantile Pursuits Under Bankruptcy Law**

Appellant cites the Supreme Court of the United States in the case of *Toxaway Hotel Co. vs. J. C. Smathers & Company*, 216 U. S. 439, and in re *Wentworth Lunch Company*, 159 Fed. 413, affirmed by the Supreme Court in a *per curiam* decision in 217 U. S. 591, wherein the Supreme Court of the United States held that the business of conducting an inn or a restaurant is not a "mercantile pursuit" within the meaning of the Bankruptcy Act that would permit the proprietor thereof to become an involuntary bankrupt. Such decisions can by no method of reasoning be considered authority to decide what the Chinese Exlusion Laws and the Treaty between China and the United States mean in defining the class of business men or merchants, as distinguished from laborers, that are entitled to come to the United States from China. Judge Neterer, in this case, expressed such a view, stating:

"The restricted meaning of 'merchant' under the Bankruptcy Act,—Toxaway Hotel Co. vs. Smath-

ers & Co., 216 U. S. 439,—in view of the provisions of the Exclusion Act and department rule, obviously has no application."

The meaning of the term "mercantile pursuits" for the purpose of the Bankruptcy Act and the term "merchant" or "business man" within the meaning of the Chinese Treaty and Exclusion Laws are entirely different in their application. The Bankruptcy Act is limited to certain kinds of business. It excludes bankers. The Chinese Treaty and Exclusion Laws do not confine the term "merchant" to any particular line of business, but include all lines of business for the purpose of distinguishing a business man entitled to be admitted to the United States, from the laborer who is excluded from admission.

**U. S. Ex Rel. Mak Fou Cho vs. James J. Davis Secretary of Labor**

The above case reported in Washington Law Reporter, Vol. 52, No. 20, page 306, decided in April, 1924, by Judge McCoy, in the Supreme Court of the District of Columbia, sitting as District Court, is depended on by the appellant in this case and on said decision apparently rests his hope of reversing the District Court herein, for he states that said decision is "directly in point and con-

trolling." It will only be necessary for this court to read Judge McCoy's entire opinion, and not just that portion quoted in appellant's brief, in order to conclude that said case is not directly in point; but on the contrary said opinion states that it was the past practice and the then policy of the immigration service to recognize as merchants within the meaning of the Chinese Exclusion Laws owners of restaurants who are engaged in the management thereof; and that the facts in said case were that the petitioner therein took no part in the mercantile end of the restaurant business, and that none of his duties were in connection with the general management thereof. In the instant case the record proves, and it is conceded that the father of appellee is the assistant manager of the Wong Kew restaurant, but in the Davis case, relied upon by appellant, the facts were found to be just the contrary. In other words, in the instant case it is conceded that the father of appellee is the assistant manager of his restaurant, whereas in the Davis case, relied upon by appellant, the Secretary of Labor found, and Judge McCoy ruled that Mak Fou Cho was the part owner of the Celestial restaurant in Baltimore and performed the duties of cashier in the day time, and on rare occasions, in addition, assumed the duty of head waiter or superintendent of the

dining room, but that he had no real part in the management of the business. On that point Judge McCoy, in said opinion, held:

"The ruling of the Department in cases in which has come into question the status of persons engaged in the restaurant business is the buying and selling and general managerial work in a restaurant are mercantile, and that a partner who conducts that part of the business is entitled to be considered a merchant. In the present case testimony has been taken, and on it the finding is that the petitioner takes no part in the buying and selling, and that his powers are not those of an assistant general manager."

The Secretary of Labor, in the *Davis or Mak Fou Cho* case, took the following position (and if applied to the case now before Your Honors, it would amount to a confession of the correctness of Judge Neterer's opinion in the instant case), and we quote from respondent's brief in said Davis case, page 3 thereof:

"The respondent further held that a restaurant is not a mercantile establishment, but that the buying, selling and general managerial work of a restaurant are mercantile in their nature. Respondent held, however, that as the petitioner was merely the bookkeeper and cashier in the restaurant and had no real part in the managing of the business, he was not a merchant within the meaning of the Chinese Exclusion Act."

The *Davis*, or *Mak Fou Cho* case, therefore, is not in point with the instant case, for in the instant case it is conceded that the duties of the father of appellee are those of an assistant general manager, whereas in the *Davis*, or *Mak Fou Cho* case, the immigration service and Judge McCoy found that the duties of Mak Fou Cho were not those of an assistant general manager. Judge Neterer, in his opinion in the instant case, recognized this distinction when he said therein:

"This case is clearly distinguished from the Mak Fou Cho case, *supra*. Chief Justice McCoy in that case said the petitioner * * takes no part in buying and selling and that his powers are not those of an assistant manager. The Department has, I understand, uniformly held heretofore that an assistant manager * * * is classed as a merchant. Two minor sons of the petitioner have heretofore been admitted and are now in the United States";

and on this latter point it must be conceded that the record shows that one of these sons was admitted to the United States in 1921 upon the status of the father of appellee as a merchant, based upon his connection with this Wong Kew restaurant with which he is still connected.

The *Mak Fou Cho case, supra*, was a petition to mandamus the Secretary of Labor to issue a mer-

chant's return certificate to Mak Fou Cho, and Judge McCoy mentioned the *Toxaway Hotel case, supra,* not for the purpose of holding that Mak Fou Cho was not a merchant, but for the purpose of showing that the respondent therein had not acted arbitrarily to such an extent that the Writ of Mandamus should issue. In that case the petitioner also had another adequate remedy at law, and naturally the Writ of Mandamus for that additional reason would not lie. Judge McCoy held that the Secretary of Labor had not acted arbitrarily or capriciously, his duty in the issuance of return certificates not being purely ministerial. The Secretary of Labor in refusing a return certificate to Mak Fou Cho as a merchant followed the reasoning and decision of Judge Hough, *supra,* for the Secretary of Labor at that time would have granted the return certificate had the facts shown that Mak Fou Cho was connected with the management of the Celestial Restaurant, as Wong Chai Chong is connected with the management of the Wong Kew Restaurant.

The fact that the immigration service now using the *Davis,* or *Mak Fou Cho case, supra,* as authority, reverts back to this old ruling abandoned in 1915, after Judge Hough's decision, is not controlling on the courts for the reason, as pointed out

above, the decision of Judge McCoy, *supra*, gives no reason for and is no authority for changing the policy of the Department of Labor; and it only shows on its face that the Bureau of Immigration has misinterpreted and misunderstood and is misapplying the decision of Judge McCoy in that case. Judge McCoy does not hold contrary to Judge Hough.

Appellant mentions a decision rendered by Judge Bourquin on December 6, 1924, in the case of *Geung Wah Yu*, No. 18485, in the District Court for the Northern District of California, wherein the court follows the *Davis case*, *supra*. The facts in the *Geung Wah Yu case* are not set forth in the opinion, and therefore it is not known whether the keeper of that restaurant performed any of the labor in preparing and serving the food or not, but, in any event, sufficient has been said in the discussion of the *Davis case*, *supra*, to show that it is not authority on the question of the mercantile status of the manager of a restaurant, and, therefore, no matter what the facts may be in the case decided by Judge Bourquin, his decision cannot be followed in the instant case now before this Court for decision.

**Appellee's Father Has Always Maintained a Mercantile Status Since His Admission in 1910**

Wong Chai Chong, appellee's father, purchased an interest in the Wong Kew Restaurant in 1920, becoming the cashier and treasurer thereof at that time. In September, 1923, he became the assistant manager thereof, and he has confined himself in a managerial capacity in connection with the mercantile end of said business up to the present time. It should be borne in mind that Wong Chai Chong, appellee's father, was a merchant in China, and was admitted to the United States as a merchant in possession of a Section Six certificate in 1910. Nowhere is it shown that at any time since 1910 has he abandoned his mercantile status, and yet appellant, at the bottom of page 17 of his brief, takes the position that as appellee arrived at the Port of Seattle on July 9, 1924, and as her father did not become the assistant manager of the business until September, 1923, that therefore she is not admissible for the reason that her father had not been such assistant manager for one year prior to her arrival at the Port of Seattle.

In the first place the law does not say that the father must have been a merchant in the United

States for a period of one year in order that he may have his minor or dependent children join him in this country. The law states that when a merchant has returned to China, or where a merchant asks for a "*pre-investigation*" of his status in contemplation of a visit to China, and desires to return to the United States, he must then show, in order to secure his own readmission, that he has been a merchant in the United States for at least one year immediately prior to his return to China, but the law does not require a domiciled merchant in the United States to have maintained that status here for one year in order to bring his family into the United States from China to join him and his domicile. However, the appellee herein contends that her father has maintained an exempt mercantile status from the year 1910, when he was admitted, up to the present time.

The immigration service at Seattle did not pass upon the mercantile status of Wong Chai Chong until November 21, 1924, which was four months after appellee arrived in the United States, and practically fifteen months after Wong Chai Chong assumed the duties of assistant manager of the Wong Kew Restaurant. His duties in connection with the restaurant, however, even prior to Sep-

tember, 1923, were as cashier and treasurer, and as cashier and treasurer in 1921, the immigration service admitted one of the minor sons to the United States.

It will thus be seen that the father of appellee was the assistant manager of his restaurant for a period of fifteen months prior to the date that the immigration service finally passed on his mercantile status, and also, in view of the fact that appellee's father was admitted to the United States in 1910 as a Section Six merchant, and that he has evidently maintained a mercantile status ever since, this court should not reverse the District Court and declare appellee inadmissible in the light of these facts simply for the reason that he had been the assistant manager only one year prior to September, 1924, whereas appellee arrived at the Port of Seattle on July 9, 1924, when, as a matter of fact, he had actually been assistant manager of said restaurant for a period of fifteen months prior to the decision of the immigration service on the question of his mercantile status. He has now been the assistant manager of that restaurant for a period of twenty-one months, or nearly two years, and if appellant's wish, as outlined in his brief, that appellee should be deported because her

father had not been the assistant manager of the restaurant for a whole year prior to her arrival in this country is followed, then a useless, vain and unnecessary thing would have to be done by her. The unjust and absurd situation would arise whereby she would simply return to China and come back again and be admitted. In the case *of Tsoi Sim vs. United States*, 116 Fed. 920-923, this court held that the doing of a vain thing is to be avoided, and said:

"If appellant was to be deported, she would have the unquestionable right to immediately return and would be entitled to return and remain in this country upon the sole ground that she is the lawful wife of an American citizen."

The Court, therefore, properly refused to deport a woman who might so easily and properly re-enter.

"Nothing is better settled than that statutes should receive a sensible construction such as will effectuate the legislative intent, and, if possible, so as to avoid an unjust or an absurd conclusion."

*Lau Ow Bew*, 144 U. S. 47; 36 L., Ed. 340.

*Church of Holy Trinity vs. United States*, 143 U. S. 457.

The appellee herein will be twenty-one years of age on August 20, 1925, but even if she had to return to China and come back again and could

not make her return here within that time, she would still be admissible for the reason that under the rules of the Department of Labor for the admission of the families of exempt merchants only the sons have to be minors, and if they are over twenty-one years of age they are not admissible; but in regard to the daughter of an exempt merchant, she is admissible, even though not a minor, if she is unmarried, the theory of the rule being that "dependent members of the household of a member of the exempt classes may enter," and in Rule 9, Subd. C, page 29, of the Department's rules governing such cases, it is stated in this respect:

"In the absence of evidence to the contrary, it shall be assumed that a wife or unmarried daughter is a member of the household of the husband or father";

and, in the next subdivision, the age limit for male children is fixed at twenty-one years.

It is therefore submitted that this appeal should be dismissed and the judgment of the lower Court sustained.

Respectfully submitted,

HUGH C. TODD,

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